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9
10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 ***

13 GERALD WILLIS,
14
15 Plaintiff,

Case No

16 v.

COMPLAINT

17 ELECTRONIC ARTS, INC.; EA SPORTS,
18 a business entity; and DOES I - XX,
19 Defendants.

JURY DEMAND

20 COMES NOW Gerald Willis, Plaintiff herein and alleges and avers as follows:

21 **I**

22 **THE PARTIES**

23 1. Plaintiff Gerald Willis (hereinafter Plaintiff or "Mr. Willis") is a music teacher,
24 conductor and composer residing in the state of Nevada, currently, in Washoe County. At all
25 times relevant to the composition of the musical work herein at issue and registration of the
26 copyright therefor, Mr. Willis was a resident of Las Vegas in Clark County, Nevada.

27 2. Plaintiff is informed and believes and thereon alleges that Defendant Electronic
28 Arts, Inc. (hereinafter "EA") is a corporation organized under the laws of the state of Delaware
with its principal place of business at 209 Redwood Shores Parkway, Redwood City, CA 94065.

1 Plaintiff is informed and believes thereon and alleges that EA is a publicly traded corporation
2 with the NASDAQ ticker symbol ERTS.

3 3. Plaintiff is informed and believes and thereon alleges that Defendant EA Sports
4 (hereinafter "EA Sports") is an affiliate, division and/or subsidiary of EA that develops, markets
5 and distributes electronic sports games on numerous platforms, throughout the United States and
6 internationally.
7

8 4. Plaintiff is informed and believes and thereon alleges that from August, 2002 to
9 September, 2005, EA and/or EA Sports availed themselves of the benefits and jurisdiction of the
10 state of Nevada by registering with the Nevada Secretary of State as a foreign corporation,
11 corporation number C20693-2002, listing GKL Resident Agents/Filings, Inc., 1000 East
12 Williams Street, Suite 204, Carson City, Nevada 89701 as its resident agent.
13

14 5. EA may be served with process by serving its California registered agent Stephen
15 G. Bene, 209 Redwood Shores Parkway, Redwood City, California 94065, its Delaware resident
16 agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, or its
17 Nevada Resident Agent GKL Resident Agents/Filings, Inc., 1000 East William Street, Ste. 204,
18 Carson City, NV 89701.
19

20 6. Plaintiff does not know the true names and/or capacities of the Defendants sued
21 herein as DOES I through XX, inclusive, and prays for leave when their true names and/or
22 capacities are ascertained, Plaintiff may be permitted to insert the same herein with the
23 appropriate allegations, but upon information and belief, Plaintiff alleges that each of said
24 Defendants, whether individuals, corporations or other entities, was the agent of every other
25 Defendant and all are legally responsible for the events and happenings referred to herein and
26 proximately caused damages to Plaintiff
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II

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) because it is a civil action involving a claim for copyright infringement pursuant to the copyright act, codified *inter alia*, at 17 U.S.C. § 101, *et. seq.*

9. This Court has personal jurisdiction over the Defendants under the Nevada long-arm jurisdictional statute, codified, *inter alia*, at NRS 14.065.

10. Plaintiff is informed and believes and thereon alleges that Defendants and/or DOES I - XX have minimum contacts with the state of Nevada such that the exercise of jurisdiction is reasonable. Further, Defendants have availed themselves of the jurisdiction of this Court and have committed such purposeful acts and/or transactions in Las Vegas, Nevada and nationwide. Generally, that they should reasonably know and expect that they could be brought to this Court as a consequence of such activity.

11. At the time of the filing of this complaint, Defendants and or DOES I - XX have marketed, sold and advertised the product that is the subject of this litigation, in a manner that is directly violative of Plaintiff's copyright. For these reasons, personal jurisdiction, both general and specific, exist and venues proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(b).

III

BACKGROUND AND ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

12. Plaintiff Gerald G. Willis, a resident of the state of Nevada and composer of the University of Nevada, Las Vegas (hereinafter "UNLV") fight song: "Win With The Rebels" is the owner of all right, title and interest to United States Copyright Registration No. PA 465 098,

1 registered with the United States Copyright office on April 23, 1990. A copy of the copyright is
2 appended hereto as Exhibit 1.

3 13. Copyright Registration No. PA 465 098 for “UNLV fight song: Win With The
4 Rebels”, sets forth the nature of the authorship as the composition of instrumental work with
5 vocal lyrics and the copyright was issued to Mr. Willis for words and music.

6
7 14. Plaintiff is informed and believes and thereon alleges that Defendants
8 manufacture, sell, offer for sale and/or use electronic sports games, on numerous platforms,
9 including, but not limited to “NCAA Basketball ‘09; NCAA Football ‘09; NCAA March
10 Madness ‘08; NCAA Football ‘08; NCAA March Madness ‘07; NCAA Football ‘07; MVP
11 NCAA Baseball ‘07; NCAA March Madness ‘06; NCAA Football ‘06; and MVP NCAA
12 Baseball ‘06.

13
14 15. Plaintiff is informed and believes and thereon alleges that Defendants are the
15 world’s leading independent developer and publisher of interactive entertainment software for
16 personal computers and advanced entertainment systems such as the PlayStation®2 Computer
17 Entertainment System, PlayStation®3 Computer Entertainment System, the PlayStation®,
18 Xbox™ video game console from Microsoft, Wii™ game console, the Nintendo GameCube™
19 and Game Boy® Advance. Defendants’ entertainment software is comprised of both video and
20 sound components. Plaintiff informed and believes and thereon alleges an important and
21 essential element of Defendants’ software is its realistic feel that is created, at least in part, by its
22 recorded and reproduced sounds including but not limited to college fight songs. Plaintiff is
23 informed and believes and thereon alleges Defendants’ products have reached more than a
24 million unit sales worldwide.

25
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27 16. Plaintiff is informed and believes and thereon alleges that the musical
28 composition “UNLV fight song: Win With The Rebels”, Copyright No. PA 465 098, has been

1 utilized in the aforementioned sports games, all to the benefit of EA, without permission, license,
2 or other authority granted by the copyright holder, Gerald G. Willis, Plaintiff herein.

3
4 **IV**

5 **FIRST CLAIM FOR RELIEF (COPYRIGHT INFRINGEMENT)**

6 17. Plaintiff repeats and realleges each and every allegation above, as if set forth in
7 full herein.

8 18. The copyrighted work “UNLV fight song: Win With The Rebels” constitutes
9 copyrightable subject matter under the copyright laws insofar as it is an original musical
10 composition that can be reproduced, communicated or otherwise perceived either directly or with
11 the aid of a machine or device.

12 19. Plaintiff owns a valid copyright registration for the copyrighted work and
13 therefore has complied with the statutory requirements for the creation and enforcement of his
14 copyrights in the copyrighted work.

15 20. Defendants and/or DOES I - XX have reproduced, prepared derivative works,
16 distributed copies, and/or utilized the copyrighted work for commercial sale and release in sports
17 games, on numerous platforms as set forth above.

18 21. As a direct and proximate result of Defendants’ and/or DOES I - XX past
19 violations and ongoing violations of Plaintiff’s copyright, Plaintiff has suffered and continues
20 to suffer monetary damages and injury to his business interests, reputation and goodwill.

21 22. Plaintiff is entitled to injunctive relief and an award of statutory damages for
22 Defendants’ and/or DOES I - XX infringement or in the alternative, Plaintiff is entitled to
23 damages commensurate with Defendants’ and/or DOES I - XX profits on its unlawful
24 appropriation of Plaintiff’s musical composition.
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23. Plaintiff is entitled to reasonable attorneys fees and costs for the necessity of having to bring this claim.

V

SECOND CLAIM FOR RELIEF (INTENTIONAL COPYRIGHT INFRINGEMENT)

24. Plaintiff repeats and realleges each and every allegation above, as if set forth in full herein.

25. At all times relevant hereto, Defendants and/or DOES I - XX were on constructive notice of Plaintiff's Registration of Copyright, PA 465 098

26. Plaintiff is informed and believes and thereon alleges that at least as early as September, 2008, Defendants and/or DOES I - XX were on actual notice that Plaintiff owned all rights to the musical composition "UNLV fight song: Win With The Rebels" and that he had registered his copyright in 1990.

27. On or about September 11, 2008, Defendants and/or DOES I - XX were provided with a copy of the copyright registration for "UNLV fight song: Win With The Rebels" demonstrating the sole copyright owner as Gerald Willis.

28. Defendants and/or DOES I - XX have acknowledged that Gerald Willis owns a valid copyright registration for "UNLV fight song: Win With The Rebels."

29. Notwithstanding Defendants' and/or DOES I - XX knowledge of valid copyright registration of "UNLV fight song: Win With The Rebels", Plaintiff is informed and believes and thereon alleges that Defendants and/or DOES I - XX continue to utilize and exploit the copyrighted work for commercial purposes, with knowledge that such use constitutes an intentional infringement of the copyright registration No. PA 465 098.

30. As a direct and proximate result of Defendants' and/or DOES I - XX violations and ongoing violations of Plaintiff's copyright, Plaintiff has suffered and continues to suffer monetary damages and injury to his business interests, reputation and goodwill.

1 31. Plaintiff is entitled to injunctive relief and an award of statutory damages for
2 Defendants' infringement or in the alternative, Plaintiff is entitled to damages commensurate
3 with Defendants' and/or DOES I - XX profits on its unlawful appropriation of Defendants'
4 musical composition.

5 32. As a result of Defendants and/or DOES I - XX's intentional commercial
6 exploitation of Plaintiff's musical composition known to be protected by a copyright
7 registration, EA has willfully infringed Plaintiff's rights since the registration date of the
8 copyright work and continues to willfully infringe Plaintiff's rights.

9 WHEREFORE, Plaintiff prays for relief as follows:

10 A. That Defendants be adjudged to have infringed United States Copyright
11 Registration No. PA 465 098.

12 B. That Defendants be adjudged to have willfully and deliberately infringed
13 United States Copyright Registration No. PA 465 098.

14 C. That Defendants, their officers, agents, servants, employees, and attorneys,
15 and those persons in active concert or participation with them who receive actual notice of
16 the order by personal service or otherwise, be permanently enjoined from directly or
17 indirectly infringing United States Copyright Registration No. PA 465 098.

18 D. That this Court order an accounting with respect to sales by Defendants on all
19 infringing products.

20 E. That Plaintiff is entitled to Defendants' total profit on the sales of any and all
21 infringing products.

22 F. That Defendants, their officers, agents, servants, employees, and attorneys,
23 and those persons in active concert or participation with them who receive actual notice of
24 the order by personal service or otherwise, be preliminarily and permanently enjoined from
25 the order by personal service or otherwise, be preliminarily and permanently enjoined from
26 the order by personal service or otherwise, be preliminarily and permanently enjoined from
27 the order by personal service or otherwise, be preliminarily and permanently enjoined from
28 the order by personal service or otherwise, be preliminarily and permanently enjoined from

1 directly or indirectly infringing Plaintiff's United States Copyright Registration No. PA 465
2 098.

3 G. That this Court award reasonable attorney fees, costs and expenses.

4 H. That this Court order the impounding and destruction of all infringing
5 products.
6

7 I. That the Court grant a preliminary and permanent injunction enjoining
8 Defendants, and all persons acting in active concert with Defendants, from copying,
9 reproducing, distributing, displaying and/or selling the copyrighted work.

10 J. Pursuant to 17 U.S.C. § 504, award Plaintiff statutory damages of up to
11 \$150,000 per infringement or, in the alternative, all profits earned by Defendants that are
12 attributable to their acts of copyright infringement.
13

14 K. Pursuant to 17 U.S.C. § 505, award Plaintiff his full attorneys' fees and costs
15 in litigating this matter;
16

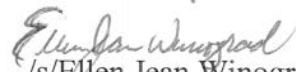
17 L. That this Court award such other relief to Plaintiff which the Court deems just
18 and reasonable.

19 **AFFIRMATION PURSUANT TO NRS 239B.030**

20 This document does not contain the Social Security number of any person.

21 DATED this 29th day of September, 2008.

Zeh & Winograd

22 
23 /s/Ellen Jean Winograd
24 Ellen Jean Winograd

25 Attorney for Plaintiff
26 GERALD WILLIS
27
28

EXHIBIT 1



OFFICIAL SEAL

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

[Signature]

REGISTER OF COPYRIGHTS
United States of America

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

PA 465 098

PA

PAU

EFFECTIVE DATE OF REGISTRATION

April 23, 1990
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

UNLV Fight Song: Win With The Rebels

PREVIOUS OR ALTERNATIVE TITLES ▼

--

NATURE OF THIS WORK ▼ See instructions

Words and Music

NAME OF AUTHOR ▼

a Gerald G. Willis

DATES OF BIRTH AND DEATH

Year Born ▼ 1955

Year Died ▼

Was this contribution to the work a "work made for hire"?
☒ Yes commissioned by
☐ No Univ. Nevada

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ► U.S.A.
Domiciled in ► U.S.A.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

Composition of instrumental work with vocal lyrics

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country

OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country

OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
1986 Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published. Month ► Sept. Day ► 1 Year ► 1986 U.S.A. Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Gerald Willis c/o Ellen Jean Winograd
3320 W. Sahara #380
Las Vegas, Nevada 89102

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

--

APPLICATION RECEIVED

APR 23 1990

ONE DEPOSIT RECEIVED

APR 23 1990

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

MORE ON BACK ► • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8

DO NOT WRITE HERE

Page 1 of 2 page:

PA

465 098

EXAMINED BY

CHECKED BY

FORM PA

☐ CORRESPONDENCE
YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Ellen Jean Winograd, Esq.

3320 W. Sahara #380

Las Vegas, Nevada 89102

Area Code & Telephone Number ▶ (702) 362-7800 (702) 434-1464

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▼

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Gerald G. Willis

date ▶ April 19, 1990

Handwritten signature (X) ▼

MAIL
CERTIFI-
CATE TO

Name ▼

Ellen Jean Winograd, Esq.

Number/Street/Apartment Number ▼

3320 W. Sahara #380

City/State/ZIP ▼

Las Vegas, Nevada 89102

Certificate
will be
mailed in
window
envelope**YOU MUST:**

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:**

1. Application form
2. Non-refundable \$10 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:Register of Copyrights
Library of Congress
Washington, D.C. 20559

* 17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.